

Amend **HB 8** (House Committee Printing) as follows:

(1) Strike SECTION 2 of the bill.

(2) Add appropriately numbered SECTIONS to the bill to read as follows and renumber existing SECTIONS of the bill accordingly:

SECTION _____. Section 5(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(a) If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt; or

(3) by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial under Article 37.071, ~~[or]~~ 37.0711, or 37.072.

SECTION _____. Section 3, Article 31.08, Code of Criminal Procedure, is amended to read as follows:

Sec. 3. Except for the review of a death sentence under Section 2(h), Article 37.071, or under Section 2(h), Article 37.072 [~~37.071(h) of this code~~], an appeal taken in a cause returned to the original county under this article must be docketed in the appellate district in which the county of original venue is located.

SECTION _____. Section 2(b), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(b) Except as provided by [~~in~~] Article 37.071 or 37.072, if a finding of guilty is returned, it shall then be the responsibility

of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision and the defendant filed his sworn motion for community supervision before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

SECTION ____ . Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.072 to read as follows:

Art. 37.072. PROCEDURE IN REPEAT SEX OFFENDER CAPITAL CASE. Sec. 1. If a defendant is found guilty in a capital felony case punishable under Section 12.42(c)(3), Penal Code, in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment without parole.

Sec. 2. (a)(1) If a defendant is tried for an offense punishable under Section 12.42(c)(3), Penal Code, in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(d) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision may not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the

notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b) or (e).

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually engaged in the conduct prohibited by the offense of which the defendant was found guilty or did not actually engage in the conduct prohibited by that offense but intended that the offense be committed against the victim or another intended victim.

(c) The state must prove beyond a reasonable doubt each issue submitted under Subsection (b) of this section, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this section.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this section, it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what

particular evidence supports a negative answer to any issue submitted under Subsection (b) of this section.

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(f) The court shall charge the jury that in answering the issue submitted under Subsection (e) of this section, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on

an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(h) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals.

SECTION _____. Articles 44.251(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the [~~institutional division of the~~] Texas Department of Criminal Justice for life without parole if the court finds that there is legally insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071, or Section 2(b), Article 37.072.

(c) If the court of criminal appeals finds reversible error that affects the punishment stage of the trial only, as described by Subsection (b) of this article, and the prosecuting attorney does not file a motion for reformation of sentence in the period described by that subsection, the defendant shall receive a new sentencing trial in the manner required by Article 44.29(c) or (d), as applicable [~~of this code~~].

SECTION _____. Article 44.29, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) If any court sets aside or invalidates the sentence of a defendant convicted of an offense punishable as a capital felony under Section 12.42(c)(3), Penal Code, and sentenced to death on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.072, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for the offense of which the defendant was convicted. At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence as permitted by Article 37.072.